

REMARKS

Applicant hereby traverses the rejections of record and requests reconsideration and withdrawal of such in view of the remarks contained herein. Claims 1-30 are pending in this application. Claims 1-19 are rejected. Claims 20-30 are allowed.

Rejections Under 35 U.S.C. 103(a)

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art cited must teach or suggest all the claim limitations. *See* M.P.E.P. § 2143. Without conceding that the second criteria is satisfied, Applicant respectfully asserts that the Examiner's rejection fails to satisfy at least the first and third criteria.

A. Claims 1-8, and 12-19

Claims 1-8, and 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,208,837 to Richey (hereinafter "Richey") in view of U.S. Patent No. 6,823,023 to Fullerton et al (hereinafter "Fullerton").

1. Lack of Motivation

Applicant asserts that a *prima facie* case of obviousness has not been established with respect to the poffered combination of Richey and Fullerton because the Examiner has not provided an objective reason to combine the teachings of the references. *See* M.P.E.P. 2143.01(IV). In attempting to show the necessary motivation for the proposed combination, the Examiner merely states that it would have been obvious to combine Richey with Fullerton "to save time, resources and as a method of conserving bandwidth." *See* Current Action, pg. 3. The proposed motivation put forth by the Examiner, i.e., saving time and resources, is merely a

general incentive, and not an objective reason to combine the references. Applicant points out that “[a] general incentive does not make obvious a particular result, nor does the existence of techniques by which those efforts can be carried out.” *In re Deuel*, 51 F.3d 1552, 1559 (Fed. Cir. 1995). Therefore, the Examiner’s motivation for the combination of Richey and Fullerton is improper. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claims 1-8 and 12-19.

2. Failure to Teach or Suggest Every Claim Limitation

Claim 1 recites an automatic gain control system comprising “means operable, at least in part, to certain tabulated statistics for directing receiver gain of said gain control system.” In the Current Action the Examiner points to Richey, at Fig. 1, as satisfying “an automatic gain control system.” *See* Current Action, pg. 2. Also, the Examiner points to Richey’s DSP 21 (shown in Fig. 2) as satisfying “means operable, at least in part, to certain tabulated statistics for directing receiver gain.” *Id.* As an initial matter, Applicant points out that Richey’s Fig. 1 depicts “a prior art technique for cancelling interference.” *See* Richey at col. 1, lines 63-65. Richey’s Fig. 1 (i.e., prior art depiction) does *not* contain a DSP. As such, according to the Examiner’s own rationale, an automatic gain control system comprising a means operable to certain tabulated statistics has not been shown.

Nevertheless, Applicant endeavors to address the Examiner’s rejection by showing that Richey (or Fullerton, for that matter) does not teach or suggest the limitation at issue. That is, Richey’s DSP 21 does not “certain tabulated statistics,” as set forth in the claim. Instead, Richey’s DSP 21 merely receives a signal from interface circuitry 23. There is no indication in Richey’s disclosure that Richey’s DSP 21 tabulates statistics. Rather, Richey’s DSP 21 is disclosed as merely “analyzing the information spectrum.” There is no suggestion that Richey’s “analyzing” involves tabulated statistics for directing receiver gain, as set forth in the claim. Moreover, Fullerton is not relied upon to teach or suggest this missing limitation, nor does it do so. As such, the Examiner’s proposed combination fails to teach or suggest every limitation of Applicant’s invention. Therefore, Applicant requests withdrawal of the rejection of record.

Claim 1 also recites “means for tabulating statistical information about periodicity and duration of RF interference.” In the Current Action the Examiner points to Fullerton, at col. 17 lines 5-6, lines 23-25, and lines 36-38, as satisfying this limitation. *See* Current Action, pg. 3. Fullerton deals with a feedback system directed towards mitigating the effects of noise. According to Fullerton, the effects of noise are mitigated by determining when noise levels rise above a given threshold, i.e., “unacceptable levels,” and responding accordingly. *See* Fullerton at col. 16 lines 45-50. Fullerton further teaches collecting parameters “from a receiving station to aid in predicting noise periodicity,” which may include, for example, “signal-to-noise ratio” and “bit error rate.” *See* Fullerton at col. 17 lines 25-30. Fullerton does not teach tabulating statistical information about the duration of RF interference. In view of the above, Fullerton fails to teach or suggest tabulating statistical information about duration of RF interference. Moreover, Richey is not relied upon to teach or suggest this missing limitation, nor does it do so. As such, the Examiner’s proposed combination fails to teach or suggest every limitation of Applicant’s invention. Therefore, Applicant requests withdrawal of the rejection of record.

Claim 13 recites “gathering statistical information about periodicity and duration of RF interference.” In the Current Action, the Examiner relies upon the rationale set forth in rejecting claim 1 to reject claim 13. *See* Current Action, pg. 6 As such, Applicant can best respond by reiterating that Fullerton deals with a Feedback system directed towards mitigating the effects of noise. According to Fullerton, the effects of noise are mitigated by determining when noise levels rise above a given threshold, i.e., “unacceptable levels,” and responding accordingly. *See* Fullerton at col. 16 lines 45-50. Fullerton further teaches collecting parameters “from a receiving station to aid in predicting noise periodicity,” which may include, for example, “signal-to-noise ratio” and “bit error rate.” *See* Fullerton at col. 17 lines 25-30. Fullerton does not teach tabulating statistical information about the duration of RF interference. In view of the above, Fullerton fails to teach or suggest tabulating statistical information about duration of RF interference. Moreover, Richey is not relied upon to teach or suggest this missing limitation, nor does it do so. As such, the Examiner’s proposed combination fails to teach or suggest every

limitation of Applicant's invention. Therefore, Applicant requests withdrawal of the rejection of record.

Claims 2-8, and 12 depend directly or indirectly from claim 1 and claims 14-19 depend directly or indirectly from claim 13. Each dependent claim inherits every limitation of the claim from which it depends. As shown above, the combination of Richey and Fullerton does not teach or suggest every limitation of claim 1 and 13. As such, claims 2-8, 12, and 14-19 are patentable in their own right and set forth limitations not taught or suggested by the proposed combination. Therefore, Applicant requests withdrawal of the rejection of record. Moreover, the dependent claims introduce additional new and non-obvious limitations not shown in the art of record.

For example, claim 8 recites "means operable, at least in part, to certain tabulated statistics for changing an RF frequency of transmissions." In the Current Action, the Examiner points to Fullerton, at col. 22 lines 26-31, as satisfying this limitation. *See* Current Action, pg. 5. In doing so the Examiner opines that Fullerton's "other measures" satisfy this limitation. Applicant respectfully disagrees and points out that simply noting that other measures are available fails to meet changing an RF frequency of transmissions, as expressly set forth in claim 8, with the specificity required under 35 U.S.C. 103. Therefore, Applicant requests withdrawal of the rejection of record.

B. Claim 9

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richey in view of Fullerton in further view of U.S. Patent No. 6,510,312 to Lempiainen (hereinafter "Lempiainen").

1. Lack of Motivation

In the Current Action the Examiner simply states "it would have been obvious ...to incorporate the teachings of Lempiainen as a method of reducing intercellular interference." *See*

Current Action, pg. 9. At best, the Examiner's recited motivation is merely a general incentive, and not an objective reason to combine the references. Applicant points out that "[a] general incentive does not make obvious a particular result, nor does the existence of techniques by which those efforts can be carried out." *In re Deuel*, 51 F.3d 1552, 1559 (Fed. Cir. 1995). Further, the Examiner wholly fails to provide any rationale as to what suggests such a combination or why one of skill in the art would have been motivated to do make the modification. "The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done." *See* M.P.E.P. 2142. Therefore, Applicant requests withdrawal of the rejection of record.

2. Failure to Teach or Suggest Every Claim Limitation

Claim 9 recites "means operable, at least in part, to certain tabulated statistics [of RF interference] for changing antenna polarity of RF transmissions." In the Current Action the Examiner relies upon Lempiainen to satisfy this limitation. However, Applicant notes that Lempiainen changes antenna polarity solely based upon how close the base station and receiver station are located to one another. As such, the Examiner's proposed combination fails to teach or suggest every limitation of Applicant's invention. Therefore, Applicant requests withdrawal of the rejection of record.

Also, claim 9 depends from claim 1 and inherits every limitation therefrom. As shown above, the combination of Richey and Fullerton does not teach or suggest every limitation of this claim. Moreover, Lempiainen is not relied upon to teach or suggest the missing limitation, nor does it do so. As such, the Examiner's proposed combination fails to teach or suggest every limitation of Applicant's invention. Therefore, Applicant requests withdrawal of the rejection of record.

C. Claim 10

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richey in combination with Fullerton in further view of U.S. Patent No. 4,457,007 to Gutleber (“Gutleber”).

1. Lack of Motivation

In the Current Action the Examiner simply states “it would have been obvious ...to apply the method as taught by Gutbeler as a method of reducing interference caused by multipath returns.” *See* Current Action, pg. 10. At best, the Examiner’s recited motivation is merely a general incentive, and not an objective reason to combine the references. Applicant points out that “[a] general incentive does not make obvious a particular result, nor does the existence of techniques by which those efforts can be carried out.” *In re Deuel*, 51 F.3d 1552, 1559 (Fed. Cir. 1995). Further, the Examiner wholly fails to provide any rationale as to what suggests such a combination or why one of skill in the art would have motivated to do make the modification. “The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done.” *See* M.P.E.P. 2142. Therefore, Applicant requests withdrawal of the rejection of record.

2. Failure to Teach or Suggest Every Claim Limitation

Claim 10 depends from claim 1 and inherits every limitation therefrom. As shown above, the combination of Richey and Fullerton does not teach or suggest every limitation of this claim. Moreover, Gutleber is not relied upon to teach or suggest the missing limitation, nor does it do so. As such, the Examiner’s proposed combination fails to teach or suggest every limitation of Applicant’s invention. Therefore, Applicant requests withdrawal of the rejection of record.

D. Claim 11

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Richey in combination with Fullerton in further view of U.S. Patent No. 6,256,477 to Eidson et al (“Eidson”).

1. Lack of Motivation

In the Current Action the Examiner simply states “it would have been obvious ...to apply the teachings of Eidson as a known method of mitigating interference in an RF system.” *See* Current Action, pg. 10. However, the Examiner wholly fails to provide any rationale as what suggests such a combination or why one of skill in the art would have been motivated to make the modification. “The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done.” *See* M.P.E.P. 2142. Therefore, Applicant requests withdrawal of the rejection of record.

2. Failure to Teach or Suggest Every Claim Limitation

Claim 11 recites “means operable, at least in part, to certain tabulated statistics for equalizing multipath events of an RF transmission.” In the Current Action the Examiner relies upon Eidson as satisfying this limitation. However, Applicant respectfully points out that Eidson does not teach or suggest equalizing multipath events as set forth in claim 11. Instead, Eidson merely discloses that a receiver may predict interference from another unit and switch carrier frequencies to avoid degradation of the signal. *See* Eidson col. 3 lines 2-5.

Also, claim 11 depends from claim 1 and inherits every limitation therefrom. As shown above, the combination of Richey and Fullerton does not teach or suggest every limitation of this claim. Moreover, Eidson is not relied upon to teach or suggest the missing limitation, nor does it do so. As such, the Examiner’s proposed combination fails to teach or suggest every limitation of Applicant’s invention. Therefore, Applicant requests withdrawal of the rejection of record.

Conclusion


In view of the above, Applicant believes the pending application is in condition for allowance. Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2380, under Order No. 68144/P002US/10501219 from which the undersigned is authorized to draw.

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Respectfully submitted,

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